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Attorney for the Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JESS C. ARNDELL and
SUZANNE K. ARNDELL,

Plaintiffs,

vs.

ROBISON, BELAUSTEGUI, SHARP & LOW, a
Professional Corporation, KENT R. ROBISON,
THOMAS L. BELAUSTEGUI, F. DeARMOND
SHARP, KEEGAN G. LOW, MARK G. SIMONS,
And JOHN DOES I-V,

Defendants.

Case No. 3:11-cv-00469

**FIRST AMENDED
COMPLAINT & JURY
DEMAND**

COME NOW, Plaintiffs, JESS C. ARNDELL and SUZANNE K. ARNDELL,
individually, by and through their Attorney of Record, CHARLES R. KOZAK, ESQ., and for
their claims against the Defendants, ROBISON, BELAUSTEGUI, SHARP & LOW, a
Professional Corporation, KENT R. ROBISON, THOMAS L. BELAUSTEGUI, F.
DeARMOND SHARP, KEEGAN G. LOW, MARK G. SIMONS and JOHN DOES I-V,
state as follows:

PARTIES

1 recommended that HMC and JACC utilize a borrow site at the nearby slough located on the
2 project to obtain soil to accomplish the original mass grading. This site eventually became a
3 17-acre retention pond directly adjacent to the Hidden Meadows community.
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5 14. During construction it became apparent there was insufficient soil quantity and
6 quality to complete construction as designed by SEA. As a result, HMC filed suit against
7 SEA (hereinafter DIRT SUIT), over these soil deficiencies. SEA's flawed analysis resulted in
8 insufficient quantities and quality of soil in the borrow site to comply with the geotechnical
9 report recommendations. To cover up for their fraud, SEA's recommendation to ARNDELL
10 was to dig deeper into the borrow site to obtain more soil. This resulted in the creation of an
11 unplanned 17-acre retention pond where the original plans called for a multi-purpose park.
12 Also, the soil recovered from the borrow site was not suitable for fill to support some of the
13 development's housing foundations. During the course of the litigation it became evident that
14 SEA was well aware of the deficiencies in their report to HMC, but intentionally concealed
15 this information. In retrospect, it was clear from the outset that the Hidden Meadows project
16 should never have been built, and in fact never would have been attempted by HMC had these
17 deficiencies been timely disclosed to JESS ARNDELL and his entities, HMC and JACC.
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20 15. As a direct result of the fraudulent conduct of SEA, HMC incurred over Eleven
21 Million Dollars (\$11,000,000.00) in debt to JACC. JACC expended these sums on behalf of
22 HMC in attempting to cure the deficiencies of SEA's fraudulent geotechnical report. JACC
23 had no choice but to bill these costs to HMC. RLF filed the DIRT SUIT on behalf HMC
24 against SEA, seeking recovery of the Eleven Million Dollars (\$11,000,000.00) HMC now
25 owed JACC. All the while, RLF continued to represent and advise HMC, JACC and JESS
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1 ARNDELL personally, all at the same time, as RLF had always done prior to filing suit on
2 behalf of HMC.

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4 16. MARK SIMONS was lead counsel, with supervisory assistance from KENT
5 ROBISON. ARNDELL was advised by them that he had a strong case against SEA,
6 and that in fact, it was a "Slam Dunk". The damages were easily verified. The fraud was
7 obvious because the original geotechnical report called for a multi-purpose park to exist
8 where the large 17-acre retention pond now sits. Further, SEA, as the civil engineer on the
9 project failed to make recommendations such as installing area drains on each lot which
10 would have mitigated their earlier fraudulent geotechnical report. The result of this failure
11 was to cause a subsequent lawsuit to be filed by seventy-one (71) homeowners (hereinafter
12 the DEFECT SUIT) who experienced standing water in their crawl spaces, as well as
13 problems related to the quality of soils ordered by SEA to be used in construction. This
14 litigation eventually cost JESS ARNDELL and his entities an additional Ten Million Dollars
15 (\$10,000,000.00).

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18 17. Two days before the trial against SEA was scheduled to commence on January 4,
19 2003, a Settlement Conference was held. ARNDELL and his daughter, KIM ARNDELL,
20 HMC's Financial Manager, attended. ARNDELL and his daughter were shocked when their
21 attorney, SIMONS, recommended that SEA's first offer of Seventy Thousand Dollars
22 (\$70,000.00) be accepted. SIMONS told ARNDELL that he must accept the offer because
23 ARNDELL owed RLF Ninety Thousand Dollars (\$90,000.00) in overdue attorney's fees.
24 SIMONS further stated that RLF was not prepared for trial, and that ARNDELL needed to
25 come up with an additional Two Hundred Fifty Thousand Dollars (\$250,000.00) immediately
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1 in order to cover RLF's attorney's fees to try the case. Eventually, SEA increased their offer
2 to One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00). ARNDELL
3 continued to refuse even that amount because he knew it meant certain bankruptcy for himself
4 personally as well as HMC and JACC. RLF persisted in applying inappropriate pressure,
5 including at one point having ROBISON call SUZANNE ARDNELL without JESS
6 ARDNELL'S permission, in order to improperly influence JESS ARDNELL'S business
7 judgment.
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10 18. The Settlement Conference ended with no resolution to ARDNELL'S
11 understanding, although SIMONS was still strongly recommending acceptance of the One
12 Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) amount. Approximately thirty
13 (30) days later ARDNELL was summoned to the RLF office. SIMONS and ROBISON
14 informed ARDNELL that he must accept the terms of the agreement because SIMONS and
15 ROBISON had already informed SEA's counsel that ARDNELL had accepted the One
16 Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) amount at the Settlement
17 Conference thirty (30) days prior. They repeated their demand for past and future attorney's
18 fees. They also stated that the case could no longer be tried because it had been taken off the
19 calendar when the settlement had been agreed to between Counsel, even though JESS
20 ARDNELL had never agreed to it. They reiterated they were not prepared for trial.
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23 19. ARDNELL was also informed at this meeting that even if he obtained a large
24 judgment, SEA would appeal and it would take years to obtain the money. Furthermore, there
25 was no explanation as to why RLF was not prepared for trial, the odds for success versus
26 failure if the case went to trial, or the strengths and weaknesses of SEA's defenses. Nor did
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1 these attorneys answer ARDNELL'S direct questions related to the possible award of post
2 judgment interest or attorney's fees in the event of an appeal.

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4 20. At this meeting, ARDNELL was first informed that he must agree to an additional
5 settlement condition. He was expected to agree to an indemnification by HMC of any future
6 claims that might be asserted by any party against SEA related to the Hidden Meadows
7 development. RLF represented to ARDNELL that this would not harm HMC, JACC or
8 ARDNELL personally because HMC was judgment proof and the indemnification would
9 apply to HMC only. Again, undue influence and inappropriate pressure were used to obtain
10 ARDNELL'S agreement to this additional condition. As an inducement to obtain
11 ARDNELL'S consent, SIMONS represented that he would defend against its application to
12 JACC or ARDNELL personally. At that time, RLF and ARDNELL were aware of pending
13 litigation by various homeowners in the development due to design defects caused by SEA's
14 fraud in the geotechnical report and ARDNELL'S concern that he preserve any and all cross
15 claims by JACC, HMC and himself personally, against SEA in the pending DEFECT SUIT.
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18 21. The DIRT SUIT settlement was signed on February 26, 2003. RLF, through
19 SIMONS, continued to represent ARDNELL, JACC and HMC, apparently without
20 cognizance of the blatant conflict of interest in doing so. By November, 2003, certain
21 homeowners had served notice pursuant to NRS Chapter 40 of defects in three (3) residences,
22 against HMC and JACC. Eventually, seventy-one (71) homeowners filed similar suits.
23 During the litigation, the Judge ruled that ARDNELL, JACC, and HMC were alter egos of
24 one another. SIMONS surprisingly provided in court testimony that supported this finding.
25 Thus, the indemnification agreement precluded ARDNELL and JACC from pursuing cross
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1 claims against SEA in the DEFECT SUIT, even though SEA was the real party at fault.

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3 22. The direct result of the alter ego ruling and indemnification ruling was that JACC
4 and ARNDELL personally paid out over Five Million Dollars (\$5,000,000.00) in claims that
5 should have been paid by SEA. JACC's financial stability was so severely damaged that its
6 Contractor's License was revoked. JACC is now insolvent. JESS ARNDELL'S income has
7 gone from approximately Two Hundred Thousand Dollars (\$200,000.00) annually to virtually
8 nothing. JESS and SUZANNE ARNDELL have suffered severe physical and emotional
9 distress as a direct result of this loss of income, all of which was directly caused by
10 the errors and omissions of RLF including but not limited to ROBISON and SIMONS.
11

12 23. RLF had a serious conflict of interest when they represented all three ARNDELL
13 entities in the DIRT SUIT litigation. JACC was a creditor of HMC. JACC was a financially
14 viable construction company with a substantial net worth. HMC was bankrupt and owed
15 JACC millions of dollars. By settling HMC's claim against SEA for less than ten percent
16 (10%) of its actual worth, RLF jeopardized JACC's financial stability and eventually brought
17 about its insolvency. RLF should have withdrawn from the joint representation of HMC,
18 JACC and ARNDELL personally, well before the DIRT SUIT settlement negotiations
19 commenced. In addition, the facts strongly suggest that RLF was self-dealing at the
20 Settlement Conference and only wished to recover sufficient money to get their own
21 attorney's fees paid, regardless of the financial ruin such a meager settlement would cause for
22 their clients.
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25 24. RLF settled HMC's claims against SEA at the Settlement Conference without
26 authorization from ARNDELL. Thirty (30) days later ARNDELL was unequivocally
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3 informed of this unauthorized action by RFL attorneys in RLF's offices. At this point, RLF
4 had a duty to withdraw as Counsel for ARNDELL, HMC and JACC, and advise them to seek
5 other and separate Counsel. Instead RLF used undue influence and misrepresentations to
6 "bully" ARNDELL into accepting the One Million Four Hundred Fifty Thousand Dollars
7 (\$1,450,000.00) settlement and concealed their own gross negligence, malfeasance,
8 misfeasance and self-dealing.
9

10 25. RLF attorneys breached their duty to use reasonable skill and diligence in preparing
11 the DIRT SUIT for trial. This was a liquidated claim with clear liability and with a defendant
12 capable of paying the full provable claim of Eleven Million Dollars (\$11,000,000.00). The
13 entire financial future of ARNDELL and his companies had been placed in the hands of RLF.
14 Up to a few days before Trial ARNDELL had been informed that the case was going well.
15 He was justifiably shocked to have his attorneys recommend acceptance of the Defendants'
16 opening offer of Seventy Thousand Dollars (\$70,000.00). This conduct is malpractice *per se*.
17 Numerous inappropriate actions and misrepresentations were used at the Conference to exert
18 undue influence on ARNDELL in order to obtain his consent to a disastrous and ill-advised
19 settlement agreement.
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22 26. After RLF had approved the settlement agreement without ARNDELL'S consent,
23 they aggravated the situation by agreeing to provide SEA with an indemnification provision.
24 Again, no consent was obtained from ARNDELL at the time this was agreed to by RLF and
25 SEA's Counsel. The terms of the indemnification agreement required HMC to hold SEA
26 harmless from all future litigation against SEA associated in any way with the Hidden
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1 Meadows Development. At the time, it was clear that litigation was about to be commenced
2 by various homeowners for construction defects caused by SEA's fraudulent geotechnical
3 plan. Ultimately, misrepresentations as to the effect of this indemnification agreement and
4 RLF's willingness to defend it in Court were used to get ARNDELL'S signature on the
5 settlement agreement.
6

7 27. Eventually, seventy-one (71) homeowners filed suit for water accumulating in their
8 crawl spaces as well as several claims for house settlement defects. Contrary to what RLF
9 represented to ARNDELL, after the adverse alter ego ruling, in part aided by the direct
10 testimony of SIMONS, the indemnification agreement resulted in the loss of all cross claims
11 by ARNDELL, HMC and JACC against SEA. Thus, ARNDELL and his entities were forced
12 to pay over Five Million Dollars (\$5,000,000.00) in attorney's fees and damages as a direct
13 result of RLF's malfeasance and misrepresentations.
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16 28. Despite all of the serious, continuing conflicts of interest described above, RLF
17 continued to represent ARNDELL and his entities with similar negative results to the present
18 day. Not once during this period did RLF disclose their misconduct in any regard, or suggest
19 that ARNDELL, HMC and JACC obtain other and separate Counsel. Nor did they
20 recommend ARNDELL obtain a second opinion regarding the ethicality or competency of
21 their advice. It was only after ARNDELL, on his own initiative, decided to consult with
22 independent Counsel that he had any understanding of the egregious conduct of RLF during
23 almost the entire course of his attorney-client relationship with them.
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26 29. ARNDELL has requested copies of his files from RLF on numerous occasions. He
27 has requested an accounting for attorney's fees he paid personally, and fees paid by various
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1 insurers to see if double payments occurred. All requests have been refused.

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3 **COUNT I**
4 **LEGAL MALPRACTICE**

5 30. Plaintiffs incorporate by reference herein, all statements and allegations in
6 Paragraphs 1 through 29 as if set forth in full herein.

7 31. Defendants' acts and omissions set forth in said Paragraphs 1 through 29 constitute
8 legal malpractice in the following regards:

9 32. As a result of said breaches of fiduciary duty, Plaintiffs have been injured as set
10 forth in Paragraphs 1 through 29.

11 33. The breaches of fiduciary duty described herein were the proximate causes of all
12 damages sustained by Plaintiffs.

13 34. The failure to use reasonable skill and diligence, duly described herein, were the
14 proximate causes of all damages sustained by Plaintiffs.

15 35. The self-dealing on the part of the Defendants, duly described herein, were the
16 proximate cause of all damages sustained by Plaintiffs.

17 36. The Misrepresentation on the part of the Defendants, duly described herein, was the
18 proximate cause of all damages sustained by Plaintiffs.

19 37. The undue influence on the part of the Defendants, duly described herein, was the
20 proximate cause of all damages sustained by Plaintiffs.

21 38. The Defendants' fraud, duly described herein, was the proximate cause of all
22 damages sustained by Plaintiffs.

23 39. The intentional harm, willful neglect, and unethical conduct on the part of the
24 Defendants due to their refusal to communicate with the Plaintiffs, duly described herein, was
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1 the proximate cause of all damages sustained by Plaintiffs.

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3 40. Abandonment of the Plaintiffs by the Defendants, duly described herein, was the
4 proximate cause of all damages sustained by Plaintiffs.

5 41. Defendants settling the case without the Plaintiffs' (their clients) authority, as duly
6 described herein, was the proximate cause of all damages sustained by Plaintiffs.

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8 42. Plaintiffs have suffered, among other damages, all items of damage recoverable by
9 statute, the common law or otherwise, including but not limited to past, present and future
10 financial ruination, past, present and future mental and physical anguish, lost business
11 opportunities, loss of business licenses and loss of the lifestyle to which they had become
12 accustomed before Defendants breached their fiduciary duties.

13
14 **WHEREFORE**, Plaintiffs, JESS C. ARNDELL and SUZANNE K. ARNDELL, jointly
15 and severally, pray for judgment against all Defendants for such actual damages as are fair
16 and reasonable in excess of Seventy-five Thousand Dollars (\$75,000.00) for and pertaining to
17 the damages suffered due to each of said Defendants' legal malpractice all as set forth
18 hereinabove, as well as Plaintiffs' costs expended herein, together with interest (including
19 pre-judgment interest), attorney's fees and for such other and further relief as the Court deems
20 just and equitable in the premises.

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22 **COUNT II**
23 **REQUEST FOR AN ACCOUNTING**
24 **(LEGAL MALPRACTICE)**

25 43. Plaintiffs incorporate by reference herein, all statements and allegations in
26 Paragraphs 1 through 42 as if set forth in full herein.

27 44. During the entire duration of any representation of Plaintiffs by Defendants as set
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1 forth above, Defendants and each of them had fiduciary relationships with Plaintiffs and
2 fiduciary duties to treat Plaintiffs fairly with respect to monies owed to or from Plaintiffs.
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4 45. During the course of the various legal matters which Defendants were handling for
5 Plaintiffs, all as set forth above, monies, payments and/or reimbursements were received by
6 Defendants from various sources, including, but not limited to Plaintiffs' insurance companies
7 and others, which monies should have been transmitted in full or in part by Defendants to
8 Plaintiffs.
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10 46. Further, Plaintiffs made various and substantial payments to Defendants for fees
11 and expenses on all of the matters for which Defendants represented Plaintiffs and Plaintiffs
12 are entitled to an accounting for all of these payments.
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14 47. Over the last year-and-one-half, despite repeated requests for the same from
15 Defendants, Defendants have refused to communicate in good faith with Plaintiffs or provide
16 them with their statutorily mandated copy of all files handled by Defendants for Plaintiffs.
17 What replies Defendants have made have been extremely limited, arrogant and evasive. Only
18 after Defendants erroneously thought the statute of limitations had run on Plaintiffs being able
19 to file a malpractice case against Defendants did Defendants produce files to Plaintiffs.
20 However, said files are not complete in that financial information described in this Count II
21 was missing in whole or in part, and Plaintiffs believe that additional files such as with regard
22 to SUNSET BLUFFS DEVELOPMENT have not been produced by Defendants.
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24 48. Defendants have also, despite repeated requests by Plaintiffs, refused to give them
25 an accounting for all financial information on each of their files including what funds
26 Defendants received from various insurance companies or other sources which in whole or in
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1 part should have been remitted by Defendants to Plaintiffs, and whether Defendants billed
2 Plaintiffs for work done for them despite having been previously paid for said work by
3 Plaintiffs' insurance companies.
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5 49. Plaintiffs are entitled to a full financial accounting with regard to all matters
6 handled for them by Defendants so an accurate determination can be made as to any balance
7 due Plaintiffs by Defendants.
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9 50. As such, the acts and omissions described in this count constitute a continuous
10 course of intentional harm, willful neglect of Defendants' duties to Plaintiffs as well as
11 unethical conduct, and Defendants should be required to account for all missing files or parts
12 thereof and provide a financial accounting to Plaintiffs with regard to all financial
13 information of any kind whatsoever related to any matters on which Defendants represented
14 Plaintiffs in any capacity.
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16 **WHEREFORE**, Plaintiffs, JESS C. ARNDELL and SUZANNE K. ARNDELL, jointly
17 and severally pray that the Court order Defendants to provide to Plaintiffs all of their files or
18 parts thereof which have not previously been accounted for or produced to Plaintiffs. Further,
19 Plaintiffs pray that the Court order Defendants to provide Plaintiffs with an accounting of all
20 monies received on Plaintiffs' cases from any sources whatsoever and that if a balance is due
21 Plaintiffs, that Defendants be ordered to immediately remit said balance to Plaintiffs. Further,
22 Plaintiffs pray that the Court award Plaintiffs all interest as provided by law on any balance
23 due Plaintiffs along with Plaintiffs' costs and attorneys fees incurred in pursuing this cause of
24 action and for such other and further relief as the Court deems just and equitable in the
25 premises.
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COUNT III
EXEMPLARY DAMAGES

51. Plaintiffs incorporate by reference herein, all statements and allegations in Paragraphs 1 through 50 as if set forth in full herein.

52. The acts and omissions of Defendants as set forth in said Paragraphs 1 through 50 constitutes such wanton, reckless, egregious, willful, malevolent and intentional conduct so as to warrant imposition of exemplary damages.

WHEREFORE, Plaintiffs, JESS C. ARNDELL and SUZANNE K. ARNDELL, jointly and severally pray that should the jury, after awarding Plaintiffs compensatory damages, determine that any of the Defendants' conduct was so wanton, reckless, egregious, willful, malevolent or intentional so as to warrant an award of exemplary damages, that the Court direct the jury to make an award of such damages, as well as Plaintiffs' costs expended herein, together with interest (including pre-judgment interest), attorney's fees and for such other and further relief as the Court deems just and equitable in the premises.

DEMAND FOR JURY TRIAL


Plaintiffs demand a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED THIS 30th day of May, 2012.

/s/ Charles R. Kozak
CHARLES R. KOZAK, ESQ.
Nevada State Bar #11179
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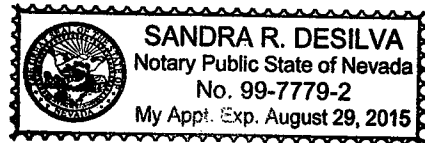
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Jess C Arndell
JESS C. ARNDELL


SUZANNE K. ARNDELL

this 30th day of May, 2012

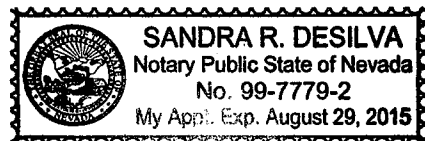
Andra L. DeSilva
NOTARY PUBLIC

[illegible]

On this 30th day of May, 2012, personally appeared before me, JESS C.

ARNDELL & SUZANNE K. ARNDELL, proven to me to be the persons whose names are subscribed to the above instrument, and who acknowledged to me that they executed the foregoing First Amended Complaint.

Jonas R. De Silva
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I, SANDI DeSILVA, certify that on the 30th day of May, 2012, I caused to be delivered by :

_____ MESSENGER SERVICE

_____ FASCIMILE to the following number: _____

XXX__ U.S. MAIL

_____ CERTIFIED MAIL, RETURN RECEIPT REQUESTED

_____ FEDERAL EXPRESS or other overnight delivery

A true and correct copy of the within document: **FIRST AMENDED COMPLAINT &**

JURY DEMAND, Case #3:11-cv-00469, addressed as follows:

JOSEPH P. GARIN, ESQ.
STEPHEN G. KEIM, ESQ.
LIPSON, NEILSON, COLE
SELTZER & GARIN, PC
9080 W. Post Road, Ste. 100
Las Vegas, Nevada 89148

/s/ Sandi DeSilva
SANDI DeSILVA